

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KELLY K KINDIG
Claimant

APPEAL NO. 09A-UI-07477-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN ORDNANCE LLC
Employer

OC: 04/12/09
Claimant: Respondent (2-R)

Section 96.5-1-d – Voluntary Quit/Illness
871 IAC 24.25(36) – Non -Job -Related Illness
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated May 15, 2009, reference 01, that held the claimant voluntarily left due to a work-related illness that is with good cause attributable to the employer on April 16, 2009, and benefits are allowed.

A telephone hearing was scheduled and held on June 4, 2009, pursuant to due notice. The claimant participated. Lynn Humphreys, Corporate Human Resource Manager; Amy Shepherd, Benefits Administrator; and Lisa Roundtree, Workers' Compensation Coordinator participated on behalf of the employer. Official notice was taken of the proposed exhibits submitted by the employer.

ISSUES:

Whether the claimant voluntarily quit employment for good cause attributable to the employer.

Whether the claimant is overpaid unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was hired on February 26, 2001, and worked as a full-time production operator. Claimant last performed work for the employer on June 16, 2008.

Claimant left employment on June 17 due to migraine headaches. It was a non-job-related illness. Claimant applied for and received short-term disability benefits through the employer's provider, Cigna, for a period to September 16, 2008. The claimant then applied for and received long-term disability benefits that were approved from September 17, 2008, through January 16, 2009.

A Cigna representative determined that the claimant was no longer disabled. She was advised, on February 5, 2009, that no further disability benefits would be paid. An employer representative helped the claimant with the appeal process review, but she was denied by a Cigna representative on April 16, 2009.

According to a Memorandum of Understanding in the union collective bargaining agreement, claimant would be subject to termination for being off work for six months. That was December 23, 2008, in this matter. However, the claimant has a 30-month period to make her request for a reinstatement of employment according to the collective bargaining agreement.

By receiving temporary and long-term disability benefits, the claimant acknowledged that her reason for leaving work was due to a non-job-related illness. The claimant consulted with Human Resource Director Griffin during a phone conversation on February 17, 2009, that she received a release to return to work from her physician with restrictions. Claimant was advised that she could not return to work until she had received a release without restrictions. The employer did not receive any medical release from claimant's physician or any medical statement that would authorize her to be able to return to her former job, as a full-time, production operator. One of the primary restrictions on the claimant's employability, is an oxygen-therapy program for her migraine headaches.

Claimant has claimed for and has been receiving unemployment benefits from the date of her claim up through the hearing in this matter.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant voluntarily left due to a non-job-related illness effective June 16, 2008, but she has not received an unrestricted doctor's release to return to work such that she is not fully recovered in order to be able and available to work her former job, as a full-time production operator.

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(36) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa

Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

Claimant is disqualified from receiving unemployment benefits because her voluntary leaving of employment is due to a non-job-related illness. She has not sufficiently recovered due to restrictions, such that she could return to her regular, full-time employment. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. Hedges v. IDJS, 368 N.W.2d 862 (Iowa App. 1985).

If the claimant does receive an unrestricted release to return to work by her physician, she has a 30-month window according to the union collective bargaining agreement to seek a reinstatement of employment from her June 16, 2008, separation.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has now been disqualified from receiving benefits in this matter, the issue of any overpayment of benefit is hereby remanded to Claims for determination.

DECISION:

The decision of the department representative dated May 15, 2009, reference 01, is reversed. Claimant voluntarily left employment without good cause attributable to the employer due to a non job related illness on June 16, 2008, and she does not have an unrestricted medical release to return to work in her former job upon filing her unemployment claim. Claimant is not entitled to receive benefits until she has worked in and been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of an overpayment of benefits is remanded for determination.

R. L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

srs/css